

United States Customs Service, Treasury

§ 111.67

the person in charge of the broker's office.

(b) *Partnership, association or corporation.* The port director shall serve the notices of charges and the statement of charges against a partnership, association, or corporation as follows:

(1) By delivery to any member of the partnership personally or to any officer of the association or corporation personally;

(2) By certified mail addressed to any such member or officer with demand for a return card signed by the addressee;

(3) By any other means which the broker may have authorized in a written communication to the port director; or

(4) If attempts to serve the broker by the above methods are unsuccessful, the port director may serve the notice and statement by leaving them with the person in charge of the broker's office.

(c) *Certified mail; evidence of service.* When the service is by certified mail, the receipt of the return card duly signed shall be satisfactory evidence of service.

§ 111.64 Service of notice of hearing and other papers.

(a) *Notice of hearing.* Within 10 days after service of the notice and statement of charges, the port director shall serve upon the broker or his attorney, by one of the methods enumerated in § 111.63 or by ordinary mail, a written notice of the time and place of the hearing. The hearing shall be scheduled to take place within 15 days after service of the notice of hearing.

(b) *Other papers.* Other papers relating to the hearing may be served by ordinary mail or by one of the methods set forth in § 111.63 or upon the broker's attorney.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.65 Extension of time for hearing.

If the broker or his attorney requests in writing a delay in the hearing for good cause, the hearing officer designated pursuant to § 111.67(a) may reschedule the hearing, notifying the broker or his attorney in writing of the

extension and the new time for which the hearing has been scheduled.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.66 Failure to appear.

When an accused broker or his attorney fails to appear for a scheduled hearing, the hearing officer designated pursuant to § 111.67(a) shall proceed with the hearing as scheduled, and shall hear evidence submitted by the parties. The regulations of this part shall apply as though the broker were present, and the Secretary of the Treasury may issue an order of suspension for a specified period of time or revocation or monetary penalty in lieu thereof if he finds it to be in order.

[T.D. 75-58, 40 FR 11562, Mar. 12, 1975, as amended by T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.67 Hearing.

(a) *Hearing officer.* The hearing officer shall be an administrative law judge appointed pursuant to 5 U.S.C. 3105.

(b) *Rights of the accused.* The broker or his attorney shall have the right to examine all exhibits offered at the hearing and shall have the right to cross-examine witnesses and to present witnesses who shall be subject to cross-examination by the Government representatives.

(c) *Interrogatories.* Upon the written request of either party, the hearing officer may permit deposition upon oral or written interrogatories to be taken before any officer duly authorized to administer oaths for general purposes or in Customs matters. The other party to the hearing shall be given a reasonable time in which to prepare cross-interrogatories and, if the deposition is oral, shall be permitted to cross-examine the witness. The deposition shall become part of the hearing record.

(d) *Transcript of record.* The port director shall provide a competent reporter to make a record of the hearing. When the record of the hearing has been transcribed by the reporter, the port director shall deliver a copy to the hearing officer, the broker and the Government representative without charge.

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(e) *Government representatives.* The Commissioner shall designate one or more persons to represent the Government at the hearing.

[T.D. 70-134, 35 FR 9254, June 13, 1970, as amended by T.D. 75-58, 40 FR 11563, Mar. 12, 1975; T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.68 Proposed findings and conclusions.

The hearing officer shall allow the parties a reasonable period of time after delivery of the transcript of record in which to submit proposed findings and conclusions and supporting reasons therefor as contemplated by 5 U.S.C. 557(c).

[T.D. 75-58, 40 FR 11563, Mar. 12, 1975]

§ 111.69 Recommended decision by hearing officer.

After review of the proposed findings and conclusions submitted by the parties pursuant to § 111.68, the hearing officer shall make his recommended decision in the case and certify the entire record to the Secretary of the Treasury. The hearing officer's recommended decision shall conform with the requirements of 5 U.S.C. 557.

[T.D. 75-58, 40 FR 11563, Mar. 12, 1975]

§ 111.70 Additional submittals.

Upon receipt of the record, the Secretary of the Treasury will afford the parties a reasonable opportunity to make such additional submittals as required by 5 U.S.C. 557(c) and by the circumstances of the case.

§ 111.71 Immaterial mistakes.

The Secretary of the Treasury will disregard an immaterial misnomer of a third person, an immaterial mistake in the description of any person, thing, or place, or the ownership of any property, any other immaterial mistake in the statement of charges or a failure to prove immaterial allegations in the description of the accused's conduct.

§ 111.72 Dismissal subject to new proceedings.

If the Secretary of the Treasury finds that the evidence produced at the hearing indicates that a proper disposition of the case cannot be made on the basis of the charges preferred, he may in-

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struct the port director to serve appropriate charges as a basis for new proceedings to be conducted in accordance with the procedure set forth in this subpart.

§ 111.73 Partial proof of charges.

If the Secretary of the Treasury finds that one or more of the charges in the statement of charges is not sufficiently proved, he may base his decision on any remaining charges if the facts alleged in the charges are established by the evidence.

§ 111.74 Decision and notice of suspension or revocation or monetary penalty.

If the Secretary of the Treasury, in the exercise of his discretion based solely on the record, issues an order of suspension for a specified period of time or revocation of the license of a broker or a monetary penalty in lieu thereof, the Commissioner will notify the broker in writing and publish a notice of suspension or revocation or monetary penalty in lieu thereof in the FEDERAL REGISTER and in the Customs Bulletin unless an appeal is filed by the broker in the Court of International Trade as provided for under section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The order of suspension or revocation shall become effective 60 days after the issuance of such order unless the Secretary finds that a more immediate effective date is in the national or public interest. If a monetary penalty is assessed and no appeal is filed, that penalty shall be tendered within 120 days of the issuance of the order, or the license shall automatically be suspended until payment is made.

[T.D. 86-161, 51 FR 30345, Aug. 26, 1986]

§ 111.75 Appeal from the Secretary's decision.

An appeal from the order of the Secretary of the Treasury suspending or revoking a license or permit or assessing a monetary penalty in lieu thereof may be taken in accordance with the provisions of section 641(e), Tariff Act of 1930, as amended (19 U.S.C. 1641(e)). The commencement of such proceedings shall, unless specifically ordered